



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

April 7, 1995
AO-95-12

Mr. Thomas S. Rafferty
Vice President, Government Relations
Blue Cross and Blue Shield of Massachusetts
100 Summer Street, 14th Floor
Boston, MA 02110-2190

Re: Name of Political Committee

Dear Mr. Rafferty:

This letter is in response to your March 8, 1995 letter, which I have decided to treat as a request for an advisory opinion.

Legislation enacted during 1994¹ added section 5B to Chapter 55 of the Massachusetts General Laws, the campaign finance law. Section 5B requires a political committee, other than a political party committee or candidate committee, to use a name or phrase that "identifies" the common employer, if any, shared by a majority of contributors. In addition, the name or phrase must identify "the economic or other special interest, if identifiable, of a majority of [the committee's] contributors." If the committee cannot identify the contributors' common employer or interest, it must use a name or phrase that identifies the economic or special interest and common employer of a majority of the committee's organizers and must identify any individual controlling the committee.

To comply with the legislation, Blue Cross and Blue Shield of Massachusetts' political action committee² changed its name from "Committee for Massachusetts" to "Health Services Company Political Action Committee." You have asked if the name complies with section 5B. For the reasons which follow, the name would not comply with the statute.

I. Background

You have stated that the names "Blue Cross" and "Blue Shield" are used under a licensing agreement with the Blue Cross and Blue Shield Association. The Association, which is

¹ Chapter 43 of the Acts of 1994.

² We assume that a majority of the contributors or organizers of the political action committee ("the Committee") are employed by Blue Cross and Blue Shield of Massachusetts.

Blue Cross and Blue Shield of Massachusetts' parent organization, has not sanctioned the Committee's use of the name "Blue Cross and Blue Shield" as the name of the PAC. In a letter from the Association³, provided with your request, the Association's Senior Associate General Counsel states that the license to use the service marks "Blue Cross" and "Blue Shield"

is limited to health care financing and prepayment ... other than our licensees, we do not permit our service marks to be used by any other organization...under the Lanham Act...and the applicable common law, we can not allow an unlicensed use and must take action to stop any such unlicensed use. At the present time, we have not licensed your political action committee nor do we have a program to enable us to license political action committees and exercise quality control over them.

In short, the Association has taken the position that the Lanham Act, a federal statute which provides for federal registration and protection of trade marks and service marks, bars the Committee's use of the words "Blue Cross" and "Blue Shield" in its name.

You have also stated that Blue Cross and Blue Shield of Massachusetts refers to itself as "The Health Services Company." The letterhead over your request reflects "Blue Cross Blue Shield of Massachusetts" and also "The Health Services Company." You state that your enabling legislation, M.G.L. c. 176A and M.G.L. c. 176B, uses the terms "hospital service corporation" and "medical service corporation." Therefore, you suggest that "The Health Services Company" may be used instead of "Blue Cross and Blue Shield of Massachusetts" to identify the common employer.

II. Discussion

Although an employer may "refer to itself" by using various phrases, such a phrase does not necessarily "identify" the employer to the public. A review of the enabling legislation referred to in your letter (M.G.L. c. 176A and M.G.L. c. 176B) compels the conclusion that the name "The Health Services Company" does not identify the employer of the contributors or organizers of the Committee. The phrase is derived from a term in M.G.L. c. 176A and M.G.L. c. 176B which may be used by other providers of health care services. No corporation has registered with the Secretary of State to do business in the Commonwealth under the name "The Health Services Company." Moreover, "Blue Cross and Blue Shield of Massachusetts" is not generally known to the public as "The Health Services Company."

The words in a statute must be construed according to the common and approved usage of the language. The language in the

³ The letter is addressed to "Blue Cross and Blue Shield of Massachusetts," not to "The Health Services Company."

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statute requires the use of an employer's name or a name or phrase that identifies the employer when contributors or organizers share a common employer. Nothing in the language of section 5B can be construed to treat Blue Cross and Blue Shield of Massachusetts differently solely because "Blue Cross" and "Blue Shield" are service marks registered pursuant to federal law.

The Lanham Act does not preempt c. 55, s. 5B. "Preemption . . . is not favored, and State laws should be upheld unless a conflict with Federal law is clear." Sawash v. Suburban Welders Supply Co., 407 Mass. 311, 315 (1990). Certainly, the use of the name "Blue Cross and Blue Shield" by your committee would create no clear conflict with Federal law: the Lanham Act allows the holder of a service mark to obtain an injunction against the "use in commerce" of a mark or the offering of goods or services "likely to cause confusion, or to cause mistake, or to deceive" See 15 U.S.C. 1114(1)(a). The Committee is not involved in commerce and therefore its use of the mark is not subject to the Lanham Act. In addition, the use by the Committee of the name would not likely cause confusion since the Committee is not providing a service similar to the service provided by Blue Cross and Blue Shield of Massachusetts and the PAC's activities are sanctioned by Blue Cross and Blue Shield of Massachusetts.

Similarly, the common law does not prohibit the committee's use of the names "Blue Cross" and "Blue Shield." Although a service mark is valuable property protected under Massachusetts law, the legislature may modify the law and condition a holder's exclusive use. The legislature did not provide for an exemption for employers doing business under registered service marks.

This office is obligated to implement c. 55, s. 5B as drafted. If there is any conflict between section 5B and common law or other statutes regarding the use of a service mark, we believe that section 5B must control absent legislative change or contrary guidance from the courts.

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,



Michael J. Sullivan
Director

MJS/cp